KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS
1200 19TH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20036
(202) 955-9600

FACSIMILE
(202) 955-9792

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November 17, 1997

VIA HAND DELIVERY

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Errata
Reply Comments of ACSI
CC Docket No. 97-208

Dear Mr. Caton:

On Friday, November 14, 1997, ACSI, by its attorneys, filed Reply Comments in CC Docket No. 97-208. Due to a malfunction of copying equipment, some copies of that filing may contain pages that were shuffled out of proper numerical sequence. Accordingly, ACSI submits the following conformed copies and respectfully requests that they be associated with its previous filing of Reply Comments in CC Docket No. 97-208. Per the filing instructions for commenters on Section 271 applications, ACSI is serving copies of this Errata filing on Janice Myles (5), ITS (1), the Department of Justice — Antitrust Division (2), and the South Carolina Public Service Commission (1). Courtesy copies also will be resent to Richard Metzger, John Nakahata, Richard Welch, Michael Pryor, Melissa Woksman and Jordan Goldstein of the Commission's staff.

If you have any questions about any of the foregoing, please do not hesitate to contact me at 202/955-9888.

Sincerely,

John J. Heitmann

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc., and	)	CC Docket No. 97-208
BellSouth Long Distance, Inc., for	)	
Provision of In-Region, InterLATA	)	
Services in South Carolina	)	

REPLY COMMENTS OF ACSI

Riley M. Murphy
Executive Vice President
and General Counsel
AMERICAN COMMUNICATIONS
SERVICES, INC.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701
301-617-4200

Brad E. Mutschelknaus
John J. Heitmann
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W.,
Suite 500
Washington, D.C. 20036
202-955-9600

Its Attorneys

SUMMARY

The initial comments filed in this proceeding make clear that BellSouth "jumped the gun" in filing its Section 271 Application for South Carolina. Its first error was in filing its Application under "Track B" *before* it has established cost-based UNE rates in South Carolina. BellSouth's failure to file cost-based UNE rates has created a market condition where no CLEC currently can offer facilities-based residential services profitably. Having locked CLECs out of the residential market by creating a cost-price squeeze, BellSouth uses the success of its anticompetitive pricing strategy as a pretext to seek Track B reentry. The Commission should not fall for this gimmick, which would only encourage other RBOCs to follow BellSouth's anticompetitive lead, and lead to an avalanche of frivolous Track B filings.

Even if the Commission is inclined to consider the merits of BellSouth's Application, the comments demonstrate that it must be denied outright because BellSouth has not satisfied the 14-point "competitive checklist" in South Carolina. DOJ, virtually every competitor in South Carolina, and several state PSCs, have concluded that BellSouth is not yet close to providing nondiscriminatory access to UNEs, its OSS systems cannot support large-scale provisioning efforts, and it lacks adequate performance measures to demonstrate nondiscrimination. As importantly, BellSouth has not filed cost-based UNE rates, and, thus, has greatly reduced the usefulness of unbundling.

If the initial comments make one thing clear above all else, it is that the Commission should not waiver on its insistence that local markets be fully and irreversibly open to

competition *before* RBOC reentry is authorized. The situation "on the ground" in South Carolina does not come close to meeting that standard.

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Provision of In-Region, InterLATA	)	
Services in South Carolina	)	

To: The Commission

REPLY COMMENTS OF ACSI

American Communications Services, Inc. and its South Carolina operating subsidiaries, (collectively, "ACSI" or the "Company"), by their attorneys, respectfully submit the following Reply Comments in response to the initial round of comments on the Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region, interLATA services in South Carolina pursuant to Section 271 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act" or "1996 Act"). As explained in ACSI's Opposition filed October 20, 1997, ACSI believes that BellSouth's Application is premature and must be denied because: (1) BellSouth is ineligible for "Track B" entry in South Carolina as it has received at least one request for interconnection (from ACSI) that, when fully implemented, will lead to the provisioning of competing local telephone service of the type described in "Track A"; (2) BellSouth's statement of generally available terms and conditions ("SGAT") lacks cost-based prices for key unbundled network elements ("UNEs") that are required by the Act and the Federal Communications Commission's ("FCC" or "Commission") rules and policies; (3) BellSouth does not comply with the 14-point

competitive checklist; and (4) BellSouth's premature entry into the interLATA market is not in the public interest. The initial round of comments and the Department of Justice's ("DOJ") evaluation contain substantial support for these positions.

Introduction

If the comments filed on BellSouth's Application make one thing clearer than all else, it is that the Commission should not alter its roadmap and DOJ should not waiver on its insistence that local markets are fully and irreversibly open to competition prior to granting an RBOC's application for interLATA relief. Competitors seeking to enter local markets across BellSouth's territory came forth with a consistent message: BellSouth has yet to establish a foundation for local competition — let alone come close to satisfying the 14-point competitive checklist.

Nondiscriminatory access to UNEs and cost-based pricing in conformance with the Act must form the core of such a foundation. Without reasonable and nondiscriminatory access to UNEs, including operations support systems ("OSS"), competition has no chance of taking hold. DOJ, multiple CLECs and numerous state commissions have concluded that BellSouth has yet to dedicate the resources necessary to meet its wholesale support obligations. Moreover, BellSouth remains obstinate in its refusal to provide performance measurements necessary to gauge its progress.

The absence of cost-based prices also makes competitive entry as intended by Congress impossible. With unbundled local loop ("ULL") rates that exceed residential local exchange rates and nonrecurring charges designed to cripple competitors, it is no wonder that

facilities-based entry in South Carolina has been limited and that no competitor has come forward with a firm implementation schedule for serving residential customers.

Yet, ACSI continues its aggressive entry into the BellSouth's South Carolina markets. It has built four state-of-the-art fiber optic networks in South Carolina. It has opened offices and hired technical personnel and sales representatives. And it has purchased a local exchange switch which will be placed in Greenville in early 1998. By reselling BellSouth's wholesale services, it has begun to build a customer base and it soon will begin migrating those customers to its own switched services. ACSI will continue to pursue all classes of customers — business and residential — to which it can provide service profitably.

In a whirl of rhetoric, newspaper advertisements and political pressure, it may not be easy to hold fast to the Act's mandate that local competition be firmly established *before* the BOCs are granted interLATA relief and additional long distance competition is realized. Nevertheless, this is the mandate contained in the Act. And, to date, it is working. Absent an amendment to the Act, ACSI, BellSouth, the state commissions, DOJ and the FCC must adhere to this mandate and cooperate to realize its rewards.

In BellSouth's case, it can point its finger at AT&T[1] or DOJ[2], and it can put to paper a plethora of promises that it is ready to relinquish its monopoly stranglehold on its

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[1] BellSouth does not need AT&T to qualify for interLATA relief — ACSI and others are ready and willing to do the job if given a fair chance.

[2] Contrary to BellSouth's rhetoric, neither DOJ nor the Commission (nor ACSI for that matter) insist on perfect OSS performance. However, DOJ and the Commission must insist that BOCs provide competitors with access to OSS that is as good as their own, and they also must insist on a perfect 14-point score on the checklist before granting BellSouth interLATA entry — the Act provides for no other passing grade. If this is "microregulation", as BellSouth calls it, then BellSouth should have considered its position more carefully when it was aggressively lobbying Congress *prior* to enactment of the 1996 Act.

local market.[3] But none of this is availing — finger pointing and paper promises simply fail to satisfy the statutory standard for interLATA entry. Ultimately, BellSouth will have only itself to blame for its failed attempt to enter the South Carolina long distance market. BellSouth has the keys and the Commission has provided a roadmap.[4] Frankly, ACSI wishes it would use both. With its substantial investment in South Carolina facilities, ACSI would like nothing more than to see BellSouth correct its OSS and provisioning problems and put an end to its anticompetitive pricing policies and practices.

Nevertheless, like a petulant child clutching all the toys in the sandbox, BellSouth claims that nobody wants to play with it. BellSouth deserves no sympathy.[5] The fact of the matter is that BellSouth will not share its bottleneck facilities in the manner in which Congress and the Commission said it must. Its OSS shortcomings make competitive entry

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[3] *Ameritech-Michigan*, ¶ 55 ("promises of *future* performance . . . have no probative value in demonstrating . . . *present* compliance with the requirements of section 271").

[4] By its own admission, BellSouth's Application falls well short of complying with the Act and the Commission's rules. *See BellSouth Brief*, at 20. Its subsequently filed Louisiana Application also is facially deficient. Although ACSI believes that the Commission properly used Ameritech's Michigan Application to provide guidance to future BOC applicants, it respectfully submits that applications such as BellSouth's that make no case for compliance with the Act and the Commission's rules should be rejected outright. Applications such as these divert the scarce resources of competitors and the Commission away from activities that may more effectively serve to open markets to local competition (*i.e.*, installing switches and ruling on complaints). Moreover, if the Section 271 application process is allowed to degenerate into a war of attrition, only the mighty will be able to play. Surely, Congress did not seek to replace seven RBOCs and three IXCs with four or five one-stop-shopping behemoths.

[5] Indeed, the South Carolina Consumer Advocate, a participant in the proceedings at the SCPSC, implies that BellSouth is to blame for "the current void of local competition in South Carolina." *South Carolina Consumer Advocate*, at 3-4 (referring to BellSouth's dilatory tactics and the South Carolina Public Service Commission's ("SCPSC") own glacial response to the Consumer Advocate's request for an examination of BellSouth's cost studies).

treacherous and its refusal to offer deaveraged and cost-based UNE prices make residential facilities-based competition economically infeasible.

BellSouth, by its own anticompetitive pricing practices, has made the facilities-based residential competition necessary to satisfy Track A economically infeasible. If, in spite of this, BellSouth is permitted to invoke Track B, the Commission will find itself drowning in a sea of Track B applications, thereby effectively derailing Track A in most states. Alarmingly, DOJ failed to rebuff BellSouth's ploy and implies that competitors should provide more information and implementation schedules for providing facilities-based residential service in their replies. In response, ACSI respectfully submits that when DOJ is able to pin BellSouth down to a firm and reasonable implementation schedule for nondiscriminatory access to UNEs (including OSS) and cost-based pricing,[6] it will consider those dates and respond in kind. BellSouth controls its bottleneck facilities and its entry into long distance — not ACSI. ACSI has invested heavily in South Carolina and would much prefer to compete in the market rather than at the Commission. ACSI respectfully expects that the Commission will not be duped into thinking otherwise.

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[6] Critically, hearings to determine BellSouth's cost-based UNE pricing have not even begun at the SCPSC. While most eyes are currently focused on the Commission's review of this Application in Washington, D.C., back in Columbia, BellSouth has proposed ULL rates that (1) are not geographically deaveraged, (2) are not based on forward-looking costs, and (3) are significantly (and prohibitively) higher than the interim rates approved in its SGAT. *BellSouth Telecommunications, Inc., Direct Testimony of Alphonso J. Varner*, SCPSC Docket No. 97-374-C, at 33-34 (Nov. 3, 1997) (hereinafter, *"Varner Testimony"*) (certain pages attached hereto as Exhibit 1). The proposed rates included in Mr. Varner's testimony include an astronomically high rate of $33.55 for a 2-wire analog (SL2) loop. *Id.*, at 34.

I. THE COMMISSION SHOULD NOT REWARD BELLSOUTH'S SELF-IMPOSED FORECLOSURE OF TRACK A BY ALLOWING IT TO INVOKE TRACK B AS A DEFAULT METHOD OF ENTRY

In its Opposition, ACSI asserted that BellSouth was ineligible for Track B entry because (1) it has received a "qualifying request"; (2) its SGAT lacks cost-based prices required by the Act; and (3) it has created a residential cost-price squeeze that is forestalling the development of facilities-based residential competition necessary for Track A entry.[7] ACSI believes that, in light of DOJ's evaluation, the third reason given deserves additional attention.

In its evaluation, DOJ states that it is not able to determine BellSouth's eligibility to proceed under Track B because the record contains little evidence concerning facilities-based competitors' plans or efforts to provide service to residential customers.[8] ACSI asserts that there is a single reason why competitors' plans to serve residential customers in South Carolina are conditional and why BellSouth should be foreclosed from proceeding under Track B: *BellSouth refuses to comply with the statutory pricing requirements of Sections 251 and 252.*

Although ACSI does not disagree with the principle, set forth by the Commission in its *SBC-Oklahoma* decision and invoked by DOJ in its evaluation, that a conclusion that a carrier "seeks to provide" residential service would be difficult to make unless the competitor is taking reasonable steps to do so within a specified and reasonable time frame, it

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[7] *ACSI*, at 11-27.

[8] *DOJ*, at 4-12.

respectfully submits that such steps must be tied to a BOC's own steps and commitments to meeting its statutory obligations. In this case, DOJ already has established that:

(1) BellSouth has refused to implement deaveraged cost-based pricing for ULLs and other checklist items;[9]

(2) "[c]ompetition through the use of [UNEs] will be seriously constrained, and may even be impossible, if those elements are not available at appropriate prices";[10] and

(3) the SCPSC has "expressly refused" to articulate the pricing methodology it will use to establish cost-based rates.[11]

In its testimony before the SCPSC and in its Opposition, ACSI demonstrated that the current cost of ULLs and related bottleneck facilities that ACSI must purchase from BellSouth in order to provide facilities-based residential service greatly exceeds BellSouth's retail residential rates, thereby making it impossible for ACSI or any other CLEC to provide residential service in South Carolina profitably.[12]

In short, BellSouth's refusal to comply with statutory pricing requirements creates a residential cost-price squeeze that effectively has sealed off the South Carolina residential market to facilities-based competition and has foreclosed Track A entry as a result. Yet DOJ concludes that more information is needed from competitors in order to conclude that BellSouth is ineligible for entry under Track B.[13]

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[9] *See DOJ*, at 40-44.

[10] *Id.*, at 35.

[11] *Id.*, at 44.

[12] *Falvey SCPSC Testimony*, at 332-33; *ACSI*, at 16-18.

[13] *See DOJ*, at n.14, 11-12.

ACSI respectfully disagrees and submits that the Commission has sufficient information to settle this issue now. ACSI has provided detail as to its switch implementation in Greenville and has affirmed its commitment to pursuing profitable residential and business opportunities in South Carolina. Moreover, BellSouth must first meet its most fundamental obligations under the Act before competitors can obtain information necessary to establish firm business plans. These obligations include setting final prices for interconnection and UNEs, OSS, permanent number portability at a reasonable price, and a neutral mechanism for distributing universal service subsidies for ULL costs.[14] The Commission currently has before it thousands of pages that prove that BellSouth is either unable or unwilling to do any of this. Until BellSouth comes to terms with its statutory obligations, competitors cannot possibly provide the Commission with more concrete information on their plans to serve residential customers in South Carolina.

If BellSouth is permitted to invoke Track B, after successfully closing down Track A with its own anticompetitive pricing policies, the Commission soon will find itself awash in a flood of Track B applications from BOCs in states that have yet to enforce the pricing principles ensconced in the 1996 Act. Like the instant Application, they, too, are likely to be spurious.

Track B was intended to function as a default mechanism in the unexpected event that no competitors sought entry in a particular state.[15] There are few (if any) states in which

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[14] *See South Carolina Cable Television Association*, at 6.

[15] *SBC-Oklahoma*, ¶ 46 ("Congress intended Track B to serve as a limited exception to the Track A requirement of operational competition so that BOCs would not be unfairly penalized in the event that potential competitors do not come forward to request access and

(continued...)

competitors have shown no interest. South Carolina certainly is not one of them.[16] ACSI already has invested millions of dollars on four South Carolina networks and will commence facilities-based competition upon completion of installation and testing of its Greenville switch in the first quarter of 1998. Moreover, it has affirmed that it will pursue all customers — business and residential — that it can serve profitably. Clearly, this is not a case where the Commission should settle for (and reward BellSouth with) the lighter burden of proof associated with Track B entry.

II. BELLSOUTH'S WHOLESALE SUPPORT PROCESSES ARE DEFICIENT

Should the Commission elect to consider BellSouth's Track B Application, it must deny it based on BellSouth's utter failure to implement the mandatory 14-point competitive checklist. Numerous commenters — including ACSI — have recounted the tremendous difficulties caused by BellSouth's material failure to provision UNEs and local resale services dependably.[17] The consistent provisioning problems experienced by new entrants, as well as an audit of BellSouth's own systems,[18] demonstrate that BellSouth lacks the OSS and

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[15](...continued)
interconnection, or attempt to 'game' the negotiation or implementation process in an effort to deny the BOCs in-region interLATA entry.").

[16] As of the date of BellSouth's Application, BellSouth had executed 83 interconnection agreements with potential South Carolina competitors and the SCPSC had certificated 16 carriers to provide competitive local exchange services. *DOJ*, at 32.

[17] *See e.g., ACSI*, at 29-40; *Intermedia*, at 22-23; *ALTS*, 23-25; *MCI*, 8, 29, 49, 64-65; *Sprint*, 15-18.

[18] *Analysis Conducted for BellSouth — LSCS; Atlanta, GA — Birmingham, AL; March 13, 1997,* at 2772-73, 2790, 2798 (attached to *ACSI Opposition* as Exhibit 6).

related back-office systems needed to provide nondiscriminatory access to UNEs and resale services.[19]

In an effort to deflect attention from their inability to provide parity in access to OSS, BellSouth and other BOCs recently have been claiming that federal regulators are seeking to hold them to an impossible standard of perfection with regard to the provisioning of OSS. This is nonsense. ACSI agrees with DOJ's opinion that the Commission should not "require 'perfection' in OSS offerings as a condition of section 271 approval."[20] Indeed, ACSI is unaware that the Commission has ever declared that it will require perfect OSS. To the best of ACSI's knowledge, all the Commission requires is "that the BOC provide the same access to competing carriers that it provides to itself."[21]

However, ACSI also agrees with DOJ's assessment that the Commission "should insist that potentially significant OSS problems be resolved *before* the BOCs enter the interLATA market."[22] As DOJ observed, post-interLATA entry regulatory solutions in this area will be exceedingly difficult to come by because a BOC that receives Section 271 approval no longer will have any incentive to resolve such problems.[23]

Having said this, ACSI is compelled to underscore its position that, based on region-wide problems it has experienced with BellSouth's provisioning of ULLs, interim

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[19] *DOJ*, at 28 (BellSouth's OSS "falls well short of satisfying standards articulated by the FCC.").

[20] *Id.*, at 28.

[21] *Ameritech-Michigan*, ¶ 143.

[22] *DOJ*, at 28.

[23] *Id.*

number portability ("INP") and wholesale services, BellSouth's OSS is woefully inadequate to support entry by local competitors.[24] Specifically, ACSI concurs with DOJ's assessment that BellSouth's pre-ordering and ordering interfaces are not capable of supporting effective competition. As ACSI and others have stated, BellSouth has yet to make any interface available through which electronic ordering of ULLs and certain complex resale orders can be accomplished.[25] Moreover, BellSouth's interface *du jour* approach to addressing its obligation to provide OSS has made planning and implementation of new entrants' own OSS exceedingly difficult and expensive.[26]

Since ACSI filed its Opposition, the Florida Public Service Commission ("FPSC") became the third state commission (joining Alabama and Georgia) in the BellSouth region to review BellSouth's OSS in light of the Commission's *Ameritech-Michigan* order and to find it inadequate.[27] Although the FPSC's written order was not available to ACSI prior to the filing of this Reply, ACSI understands that the FPSC adopted in large part its Staff

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[24] BellSouth's wholesale support processes function on a region-wide basis. Any ACSI request, whether for a two wire loop in Georgia or a "switch as is" resold line in South Carolina, goes through the same BellSouth local competition service center in Birmingham, Alabama. Thus, the difficulties outlined by ACSI in its Opposition with respect to BellSouth's provisioning of ULLs and INP in Georgia and Alabama are no less relevant to the Commission's assessment than those difficulties set forth by ACSI with respect to BellSouth's wholesale services in South Carolina.

[25] *ACSI*, 46-48; *ALTS*, 23-24.

[26] *See, e.g., Intermedia*, 23-26.

[27] On November 3, 1997, the FPSC found that BellSouth had not met six of the fourteen checklist requirements. Specifically, the FPSC found that BellSouth had not met points 1, 2, 5, 6, 7 and 14. Florida Public Service Commission, *In re Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786-TL.

Recommendation which, *inter alia*, found that: (1) BellSouth "is not providing pre-ordering capabilities at parity with that it provides itself"; and (2) "BellSouth has not provided nondiscriminatory access to ordering and provisioning functions".[28] The FPSC Staff Recommendation also found BellSouth to be deficient with respect to its OSS for maintenance and repair and billing.[29] Because of the region-wide functionality of BellSouth's OSS, ACSI concurs with DOJ's view that the findings of the FPSC are instructive, especially in the absence of any comprehensive review by the SCPSC.[30]

III. FORWARD-LOOKING COST-BASED PRICES MUST BE IN PLACE BEFORE FACILITIES-BASED COMPETITION CAN TAKE HOLD

DOJ's assessment that BellSouth's Application "does not establish that either current or future prices for unbundled elements will permit efficient firms to enter and compete effectively" echoes the comments of ACSI, other competitors and the South Carolina Consumer Advocate.[31] As DOJ recognized, and the experiences of ACSI and other competitors confirm, "[c]ompetition through the use of [UNEs] will be seriously constrained, and may even be impossible, if those elements are not available at appropriate prices."[32]

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[28] Florida Public Service Commission, *In re Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786-TL, Staff Recommendation (Oct. 22, 1997) at 111-30 ("FPSC Staff Recommendation").

[29] *Id.*

[30] *See DOJ*, at 29.

[31] *Id.*, at 43-44; *ACSI*, at 22-27; *Intermedia*, at 8-11; *ALTS*, at 15; *AT&T*, at 38-42; *South Carolina Consumer Advocate*, at 3-5.

[32] *DOJ*, at 35.

ACSI already has demonstrated in its Opposition how BellSouth's refusal to offer geographically deaveraged cost-based pricing for UNEs and NRCs hampers competitive entry and makes residential facilities-based competition economically infeasible.[33]

DOJ's conclusion that BellSouth has not even attempted to establish the *statutorily mandated* forward-looking cost-based prices necessary to ensure the full and irreversible opening of the South Carolina local exchange market to competition is consistent with the lack of any information to the contrary in BellSouth's Application.[34] Indeed, the South Carolina Consumer Advocate commented that "the lack of definitive cost based rates is one of the reasons facilities based competition has been slow to develop in South Carolina. Not surprisingly, companies want to know what their primary costs will be before they decide to invest in a certain market."[35]

Nevertheless, BellSouth apparently holds fast to the idea that if it persists and shrouds the issue with the frightful cloak of "jurisdiction" it somehow will convince the Commission that it lacks authority to take account of a state's wholesale pricing structure. Thus, BellSouth asserts that "[t]he SCPSC's pricing determinations are conclusive" for Section 271 purposes.[36] DOJ concluded that this argument is "plainly wrong."[37] ACSI agrees. In order to fulfill their statutory roles, DOJ and the Commission *must* take account of pricing.

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[33] *ACSI*, at 16-18; *see also Sprint,* at 39-40.

[34] *DOJ*, at 41.

[35] *South Carolina Consumer Advocate*, at 7.

[36] *BellSouth Brief*, at 37.

[37] *DOJ*, at 44.

To date, both DOJ and the Commission have done that by establishing well reasoned pricing principles that should serve as a mandatory prerequisite to any grant by the Commission of BOC interLATA relief.

As ACSI and other commenters set forth in their initial comments, neither BellSouth nor the SCPSC can explain how the prices in BellSouth's SGAT conform to the cost-based pricing requirements of Sections 251 and 252 — or of the roadmap provided in the Commission's *Ameritech-Michigan* order.[38] The SCPSC has yet to articulate any costing methodology — let alone one that is forward-looking and reflective of competitive pricing principles.[39] As ACSI outlined in its Opposition, the potpourri of negotiated, arbitrated and tariff-based rates and "as negotiated" pricing provisions contained in BellSouth's SGAT bear no discernable relation to cost.[40] DOJ agrees.[41]

Moreover, the SCPSC's "true up" and "price cap" mechanisms do not solve this problem. Again, DOJ and other commenters agree.[42] As DOJ observed, the true-up and price cap mechanisms "do not preclude the possibility that in the near future, unbundled element prices may increase significantly, in ways that are unpredictable and

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[38] *ACSI*, at 22; *ALTS*, 20-22.

[39] *SCPSC Order*, at 56.

[40] *ACSI,* at 22-23.

[41] *DOJ*, at 42.

[42] *Id.*, at 43.

anticompetitive."[43] The comments of the South Carolina Consumer Advocate on this point are particularly resonant: "Given the SCPSC's decision to set the resale discount at a comparatively scant 14.8%, it also is not surprising that BellSouth's potential competitors find little comfort in a promise to set cost based rates in the future."[44]

IV. BELLSOUTH HAS FAILED TO INSTITUTE THE PERFORMANCE MEASUREMENTS NECESSARY TO DETERMINE COMPLIANCE WITH THE ACT

ACSI agrees with DOJ's conclusion that "BellSouth has failed to 'provide[] sufficient performance measurements to make a determination of parity or adequacy in the provision of resale or UNE products and services to CLECs."[45] Focusing on one of ACSI's many concerns about BellSouth's proposed performance measurements, DOJ found that BellSouth's reliance on "percentage of dates missed" was no substitute for providing actual installation intervals and that it easily could conceal a significant lack of parity.[46]

In addition, ACSI concurs in DOJ's conclusion that BellSouth's lack of adequate performance measurements for (1) pre-ordering functions, (2) ordering functions, (3) billing timeliness, accuracy and completeness, (4) service order quality, (5) operator assistance functions, (6) directory assistance functions, (7) 911 functions, (8) firm order confirmation

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[43] *DOJ*, at 43. As BellSouth's testimony from the ongoing SCPSC costing docket reveals, BellSouth has no intention of deaveraging rates for UNEs on a geographic basis and has every intention of raising ULL rates (rates on which ACSI is critically dependent) to astronomical levels. *Varner Testimony*, at 33-34 (attached hereto as Exhibit 1).

[44] *South Carolina Consumer Advocate*, at 7.

[45] *DOJ*, at 29 (citing Friduss Aff., ¶ 78 (DOJ Exh. 3)).

[46] *Id.*

cycle time, and (9) reject cycle time "prevent[s] any conclusion that adequate, nondiscriminatory performance by BellSouth can be assured now or in the future."[47] Given BellSouth's failure to implement adequate performance measurements in these crucial areas, ACSI also agrees with DOJ's conclusion that BellSouth has not adopted enforceable performance standards nor satisfactory performance benchmarks necessary to protect against backsliding and to demonstrate that its local exchange markets have been fully and irreversibly opened to competition.[48]

V. THE SCPSC's MISCHARACTERIZATION OF ACSI's TESTIMONY HAS LEAD IT TO ERRONEOUS CONCLUSIONS

At odds with virtually all other commenters, the SCPSC filed comments in support of BellSouth's Application. The SCPSC took the occasion to reaffirm findings made during its own inquiry that resulted in its approval of BellSouth's SGAT and recommendation in favor of BellSouth's interLATA entry. ACSI agrees with the principle that a state commission's recommendations in Section 271 proceedings should be afforded due deference. However, the deference due must be severely limited where, as in the instant case, the state commission's factual and legal determinations are not supported by the evidence in the record. As AT&T (and MCI) pointed out in surprising detail:

> The SCPSC did not independently consider the record but "rubber-stamped" both the SGAT and BellSouth's section 271 application by adopting, virtually verbatim (including typographical errors), the proposed 68-page order submitted by BellSouth. As a result the "SCPSC's" order makes "findings" with regard to OSS, pricing,

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[47] *Id.*, at 47.

[48] *Id.*, at 47-48.

> CLEC entry plans, and other matters that ignore or blatantly misstate the record or applicable law.[49]

With all due respect to the SCPSC, ACSI concurs with AT&T and MCI on the need to respond to the erroneous conclusions made by the SCPSC on the basis of mischaracterizations of ACSI's testimony.[50]

Starting with the summary of ACSI's testimony that appears in the *SCPSC Order* and concluding with statements made in the *SCPSC Comments* filed in this docket, ACSI submits the following to clear the record.

- *What the SCPSC said:*

  "Mr Falvey conceded that ACSI has no current plan or commitment as to when local services may be provided."[51]

  What ACSI actually said:

  "ACSI is reselling local exchange service" in four markets in South Carolina.[52] Moreover, ACSI made it clear that it intends to become a facilities-based provider in South Carolina and that it intends to install a switch in South Carolina early in 1998.[53]

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[49] *AT&T*, at 47 (citations and footnote omitted); *MCI*, at 9-10 (describing the five changes the SCPSC made to BellSouth's proposed order).

[50] *See AT&T*, at n.27 and n.28; *MCI*, at 9-10.

[51] *SCPSC Order*, at 17-18.

[52] *Falvey SCPSC Testimony*, at 350.

[53] *Id.*, at 355, 357, 360.

- *What the SCPSC said:*

"ACSI stated that it had no intent to compete for residence customers in South Carolina."[54]

What ACSI actually said:

Although it is technically able to provide local services to residential customers in South Carolina, "[f]rom a business perspective, ACSI is unable to provide local service to residential customers largely because BellSouth's pricing policies have created a price squeeze that makes it economically infeasible to serve the residential market."[55]

After comparing the cost of ULLs to BellSouth's retail residential rate, Mr. Falvey stated "[o]bviously, *since the BellSouth unbundled price to ACSI exceeds BellSouth's residential retail prices*, ACSI — or any other competitive carrier — has no prospect of providing service in the residential market at competitive rates."[56]

In response to the question "what would have to happen to open the residential market in South Carolina to local service?", Mr. Falvey made the following response:

> BellSouth would have to lower its prices for unbundled loops substantially. ACSI believes that permanent, deaveraged cost-based rates are necessary in order for CLECs to begin to consider offering facilities-based service in the residential market. Once market participants have available cost-based residential loop rates — which necessarily include deaveraged unbundled loop rates — they can determine whether residential competition is economically feasible.[57]

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[54] *SCPSC Order*, at 18 and, again, at 19.

[55] *Falvey SCPSC Testimony*, at 332.

[56] *Id.*, at 332-33.

[57] *Id.*, at 333.

- *What the SCPSC said:*

  "[N]one of BST's potential competitors are taking any reasonable steps towards implementing any business plan for facilities-based local competition for business and residence customers in South Carolina."[58]

  What ACSI actually said:

  "ACSI is reselling local exchange service" in four markets in South Carolina.[59] Moreover, ACSI made it clear that it intends to become a facilities-based provider in South Carolina and that it intends to install a switch in South Carolina early in 1998.[60]

  As discussed above, ACSI also stated that "permanent, deaveraged cost-based rates are necessary in order for CLECs to begin to consider offering facilities-based service in the residential market. Once market participants have available cost-based residential loop rates — which necessarily include deaveraged unbundled loop rates — they can determine whether residential competition is economically feasible."[61]

- *What the SCPSC said:*

  "ACSI . . . testified that it does not compete as a local service provider, but rather only as an access provider."[62]

  What ACSI actually said:

  "In South Carolina ACSI has networks operational here in Columbia, Greenville, Spartanburg and in Charleston. Currently ACSI is reselling local exchange service in those markets."[63] Moreover, ACSI made it clear that it

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[58] *SCPSC Order*, at 19.

[59] *Falvey SCPSC Testimony*, at 350.

[60] *Id.*, at 355, 357, 360.

[61] *Id.*, at 333.

[62] *SCPSC Order*, at 19.

[63] *Falvey SCPSC Testimony*, at 350.

intends to become a facilities-based provider in South Carolina and that it intends to install a switch in South Carolina early in 1998.[64]

- *What the SCPSC said:*

  "While ACSI stated in response to cross-examination from MCI that it had an 'intent' to compete in the future, ACSI testified that it had no business plan or firm commitment to place the necessary facilities in South Carolina to begin to provide such competition."[65]

  What ACSI actually said:

  "[W]e have networks, and we provide dedicated services over those networks in the four [South Carolina] markets. What we don't have here is the switch. . . . South Carolina is critical to our company. And we are coming with switched services . . . . Baltimore and New Orleans are right around the corner. South Carolina is not long after that. We are certainly not ignoring South Carolina."[66]

  Elsewhere in his testimony, Mr. Falvey made it clear that ACSI intends to become a facilities-based provider in South Carolina and that it intends to install a switch in South Carolina early in 1998.[67]

- *What the SCPSC said:*

  "ACSI's decision not to compete in South Carolina is not related to any action on the part of BST, but rather its own business decision to deploy its capital in other areas, such as Georgia, Texas, New Orleans and Baltimore."[68]

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[64] *Id.*, at 355, 357, 360.

[65] *SCPSC Order*, at 19.

[66] *Falvey SCPSC Testimony*, at 257.

[67] *Id.*, at 355, 357, 360.

[68] *SCPSC Order*, at 19.